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ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

January 31, 2017

To: Subcommittee on Health Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on "Patient Relief from Collapsing Health Markets"

On **Thursday, February 2nd, at 10:30 a.m., in Room 2123 of the Rayburn House Office Building**, the subcommittee will hold a legislative hearing entitled, "Patient Relief from Collapsing Health Markets."

I. BACKGROUND

The Affordable Care Act (ACA) established state and federal insurance marketplaces to increase access to high quality health insurance coverage.[1] In 2016, about 10.4 million Americans were enrolled in plans offered on the state or federal marketplaces.[2] As a result of increased marketplace access and other relevant provisions in the ACA, 20 million previously uninsured Americans have obtained health insurance since 2010.[3] Further, under the ACA the

[1] U.S. Department of Health and Human Services (HHS), *Key Features of the Affordable Care Act by Year* (Aug. 13, 2015) (online at http://www.hhs.gov/healthcare/facts-and-features/key-features-of-aca-by-year/index.html).

[2] Centers for Medicare and Medicaid Services (CMS), *First Half of 2016 Effectuated Enrollment Snapshot* (Oct. 19, 2016) (online at https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-10-19.html#).

[3] HHS, *Health Insurance Coverage and the Affordable Care Act, 2010-2016* (Mar. 3, 2016) (online at https://aspe.hhs.gov/sites/default/files/pdf/187551/ACA2010-2016.pdf).

uninsured rate for healthcare coverage has been reduced by half and is now at a historic low of 8.6 percent.[4]

II. H.R. 708, STATE AGE RATING FLEXIBILITY ACT OF 2017

The ACA limited age rating by insurers to 3-to-1, meaning insurers cannot charge older individuals premiums that are more than three times as much as younger individuals.

The legislation introduced by Rep. Bucshon (R-IN), would change the age rating default to a 5-to-1 ratio, thereby allowing insurers to charge higher premiums to older individuals, up to five times as much as the premiums paid by younger individuals. The bill, as drafted, would allow states to establish any age rating ratio they choose.

III. H.R. 710, HEALTH COVERAGE STATE FLEXIBILITY ACT OF 2017

To help Americans afford their health insurance premiums, the ACA provides advanced premium tax credits (APTCs) to individuals and families who earn up to 400 percent of the federal poverty level on a sliding scale based on income.

Under current law, if an individual who receives an APTC fails to pay his or her premium, he or she enters a 90-day grace period.[5] The grace period is intended to help lower-income Americans, those with fluctuating incomes, and those gaining insurance for the first time to maintain their coverage. It is also intended to help reduce churn in the individual market and achieve continuity of care.[6] During the first month of the grace period, the individual remains insured, and the insurer is required to pay any claims incurred. After the first month, insurers may pend all claims to providers. If the individual fails to pay his or her premium for the full 90-day period, they lose their coverage.

The bill introduced by Rep. Flores (R-TX), would shorten the grace period such that if an individual with an APTC misses one monthly premium payment, in part or whole, that individual would lose their insurance coverage and forfeit said coverage until the next open enrollment period.

IV. H.R. 706, PLAN VERIFICATION AND FAIRNESS ACT OF 2017

Because of the transient nature of the individual market, the ACA allows for some individuals to enroll and purchase health insurance outside of the designated open enrollment

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[4] Centers for Disease Control and Prevention (CDC), *Health Insurance Coverage: Early Release of Estimates from the National Health Interview Survey, January –March 2016* (https://www.cdc.gov/nchs/data/nhis/earlyrelease/insur201609.pdf).

[5] 45 C.F.R. § 156.270(c) (https://www.gpo.gov/fdsys/pkg/CFR-2013-title45-vol1/pdf/CFR-2013-title45-vol1-sec156-270.pdf).

[6] Health Affairs, *Health Policy Brief: The 90-Day Grace Period* (Oct. 16, 2014) (http://healthaffairs.org/healthpolicybriefs/brief_pdfs/healthpolicybrief_128.pdf).

period, known as Special Enrollment Periods (SEPs). Life and employment changes cause some individuals to move into and out of sources of coverage, such as job-based plans and Medicaid, leading to "churn" in and out of marketplace plans. These changes can occur at any time of the year, including times beyond the ending of open enrollment.

Initially, the Administration had allowed for more than 30 SEP categories. In 2016, the Centers for Medicare and Medicaid Services (CMS) reduced and streamlined SEPs to six major categories in response to issuers' concerns that SEPs may have been subject to abuse. In addition, CMS requires all consumers who enroll or change plans using a SEP for the five most popular SEP categories (loss of minimum essential coverage, permanent move, birth, adoption/foster care placement, and marriage) to provide proof of their initial eligibility.

The bill introduced by Rep. Blackburn (R-TN), requires that an Exchange verify an individual's eligibility for a SEP *prior* to that individual's attainment of coverage. This process would be set forth by the Secretary of the Department of Health and Human Services (HHS) through an interim final rule. Additionally, the bill would require the Inspector General of HHS to conduct a study on SEP utilization, including the number of individuals who attempted to enroll in SEPs, the number of individuals who were not allowed to enroll in SEPs, and the reasons for disallowances.

V. DISCUSSION DRAFT OF H.R. ____, PREEXISTING CONDITIONS PROTECTION AND CONTINUOUS COVERAGE INCENTIVE ACT OF 2017

The ACA prohibits insurance companies from denying coverage, in whole or in part, rescinding coverage, or determining premium cost based on a preexisting condition.

Title I of the draft legislation introduced by Rep. Walden (R-OR) would, upon full repeal of the ACA, prohibit the application of preexisting condition exclusions and require guaranteed issue in the individual and group markets. Title II is a "placeholder" implying that some continuous coverage requirement or policy would be put in place as a precondition for Title I to apply. The draft measure does not include any specific language, therefore it is unclear how such a policy would work.

VI. WITNESSES

J. Leonard Lichtenfeld, MD
Deputy Chief Medical Officer
American Cancer Society

Doug Holtz-Eakin
President
American Action Forum

J.P. Wieske
Deputy Commissioner of Insurance
State of Wisconsin